

EXHIBIT 2

- Excerpts from the January 11, 2013 Hearing before the Court

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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 IN RE: METHYL TERTIARY BUTYL 00 MDL 1358
3 ETHER ("MTBE") PRODUCTS Master File C.A.
4 LIABILITY LITIGATION No. 1:00-1898(SAS)
4 04CV4973 (SAS)

5 -----x

6 January 11, 2013
6 12:43 p.m.

7 Before:

8 HON. SHIRA A. SCHEINDLIN,

9 District Judge

10 APPEARANCES

11 MILLER, AXLINE & SAWYER
12 Plaintiffs City of Fresno
12 BY: TRACEY O'REILLY

13 McDERMOTT, WILL & EMERY
14 Attorneys for Defendants Exxon Mobil Corp.
14 and defendants' liaison counsel
15 BY: JAMES PARDO
15 STEPHEN J. RICCARDULLI

16 SEDGWICK, LLP
17 Attorneys for Defendants Shell Oil Co.;
17 Texaco Refining and Marketing, Inc.;
18 Chevron U.S.A. Inc.; Motiva Enterprises;
18 Equilon Enterprises, LLC
19 BY: PETER C. CONDRON

20 BRACEWELL & GIULIANI
20 Attorneys for Defendants Ultramar, Inc.;
21 Valero Marketing and Supply Company [DOE 1]
21 BY: COY M. CONNELLY

22 SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
23 Attorneys Defendant for Exxon Mobil Corp.
23 BY: JEFFREY J. PARKER

24
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1 MR. CORRELL: I know we are, your Honor, but
2 sometimes -- we typically file those together, like we're doing
3 here. So that may have been -- I'm just trying -- I don't
4 recall why we didn't get the trespass claim out.

5 THE COURT: Well, get it out. It's not in my court,
6 and it would be interesting to see if that other judge follows
7 all this other California law and says it's out.

8 MR. CORRELL: We'll have to do it in pretrial
9 conference, your Honor.

10 THE COURT: You don't have a lot of time left. You go
11 to trial in a month.

12 MR. CORRELL: The pretrial conference is in a week and
13 a half, your Honor.

14 THE COURT: Okay. I will say again, I think this
15 trespass claim is weak, and the plaintiffs should move on.
16 That said, I can't bar you from making a motion. If you want
17 to make motions until the cows come home, make motions. All I
18 can do is give you my views upfront so you know what you're
19 facing.

20 Let's go ahead and talk briefly about nuisance. Give
21 me a minute. This has got specific cites, I think. Hold on.
22 I've got to review the notes again.

23 Here, the City agrees that the defendants have to have
24 done something more than place a product into the stream of
25 commerce, right, to prevail on a nuisance claim. Right?

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1 a promotion of --

2 THE COURT: That may be, but the defense is saying in
3 this case, for specific defendants at specific locations, you
4 don't have that evidence. That's why I'm saying, before this
5 one gets briefed, I would hope you would show some flexibility
6 of looking at case by case and defendant by defendant and
7 realizing where you do have it and where you don't.

8 And maybe if you have that kind of conversation, the
9 defense would also come to the same realization and say, we won
10 the ones we should have and we realize there are fact issues on
11 the others. We'll try those. How many -- I don't know the
12 insides and outsides of the Fresno case. How many sites are
13 you talking about?

14 MS. O'REILLY: The list is attached to their --

15 THE COURT: Well, don't tell me that. Tell me how
16 many you have.

17 MR. CORRELL: 20, your Honor.

18 MR. PARKER: 20.

19 THE COURT: How many?

20 MR. PARKER: 20.

21 THE COURT: And how many moving defendants are there
22 on this one?

23 MR. PARKER: Because some have been dropped, like the
24 Chevron entities, I believe there will be six moving. Probably
25 about six. I mean, it will be a combined motion, your Honor.

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1 MR. PARKER: -- and identified the exact moving
2 defendants for that particular station.

3 THE COURT: That's good. But now I'm saying I'd like
4 to test it the way she's arguing here, which is to say if these
5 defendants even gave instruction manuals that had a phone
6 number to call if there's a spill, that's enough to sustain a
7 nuisance is claim. And we should test that once, but only
8 once. If she loses it, it applies to all of those where that's
9 the only evidence.

10 Another example is the defendant required the presence
11 of certain equipment. Okay. If that's enough, then if she
12 wins it once then, she wins it every time. If she loses it,
13 she loses it every time. That's what I'm trying to ask you to
14 do when you sit down to structure your motion.

15 MR. PARKER: That's what I was going to propose, your
16 Honor, is if the plaintiff can tell us for the identified
17 defendants on this table what their evidence is, then we can do
18 what your Honor suggested, and that's target the particular.
19 If this is all there is, is that enough.

20 THE COURT: That's right. We can structure the motion
21 so that it's useful to me. I'm not going to take 20 motions on
22 20 sites. I'd rather you broke it down the way you did here
23 and say, we think we have enough for a nuisance claim merely
24 because there was manuals from the company that delivered it,
25 or because they told them what equipment they had to have on

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1 premises, or -- and ratchet it up from the least to the most,
2 and that's how I'll rule, and it applies across the board.

3 Then we won't have to do it for 20 specific sites
4 because you said this is very fact intensive, but really, in
5 the end, it breaks down to categories. Were there only
6 instructions? There's only equipment or whatever else, those
7 are examples. Whatever else you have. All right. Will you do
8 it that way? Which requires you to meet with them first before
9 they file the motion.

10 MS. O'REILLY: Certainly, your Honor, we can do that,
11 and we can meet and confer with them to see if we can
12 categorize some of these stations in order to structure it in a
13 way that would make it easier for you.

14 THE COURT: Well, the way I just told you --

15 MS. O'REILLY: Yes.

16 THE COURT: -- take that as an order because I don't
17 want it any other way. You have to say in some of these
18 locations our theory rests solely on the manual accompanying
19 the delivery, in some of these it rests on telling them what
20 equipment to put in, and some of them, I don't know what,
21 there's on-site inspections regularly by the delivering
22 defendant; so whatever it might be. Okay.

23 MR. PARKER: That sounds good.

24 THE COURT: That meet and confer and information
25 sharing has to happen before the motion.

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1 MR. PARKER: Thank you.

2 THE COURT: Then I'll go with that. So today is
3 January 11th. By February 8th you must supply this
4 information, Miss O'Reilly, but I tell you, do not ask for an
5 extension of that date. I won't do it. I won't do it. It's
6 not right. This is an old case. Everything is old. Comes a
7 time everything has to move. So after you get that, then you
8 can have your meet and confer within two weeks after that?

9 MR. PARKER: Yes, your Honor.

10 THE COURT: All right. That takes you up to
11 February 22nd. And after that meet and confer, you're ready to
12 move because you know what's in and what's out. Hopefully, the
13 plaintiff will understand, maybe, that some defendants at some
14 sites are not in and maybe the defendant will, upon reviewing
15 the evidence, will know it's not a motion for summary judgment,
16 it's a trial issue. Heck, you haven't even moved to take
17 nuisance and trespass out of the Crescenta Valley case; so I
18 guess you don't care that much. So work it out to the extent
19 you can.

20 MR. PARKER: Thank you, your Honor.

21 THE COURT: All right.

22 MS. O'REILLY: Thank you, your Honor.

23 THE COURT: Now, I want to flip to the Duke. Who's
24 here for Duke?

25 MR. WEDEKING: Jim Wedeking for Duke.

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